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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/694,744	10/29/2003	Paul Higginbotham	MET20US	5752
7590	01/10/2006		EXAMINER SOTELO, JESUS D	
C.A. Rowley P.O. Box 59 51 Riverside Parkway Frankford, ON K0K 2C0 CANADA			ART UNIT 3617	PAPER NUMBER
DATE MAILED: 01/10/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/694,744

Applicant(s)

HIGGINBOTHAM ET AL.

Examiner

Jesús D. Sotelo

Art Unit

3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1 and 3-17 are in the application. Claim 2 has been canceled.
- 2.

Continued Examination Under 37 CFR 1.114

3. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/22/05 has been entered.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sabo (2,950,488) in view of Jarvis, Jr. (4,263,686).

Sabo discloses a buoyancy device comprising a central portion shown generally around zipper 45 for forming a rear buoyancy area 21, 22 interconnected to a pair of lateral portions, each forming an under arm buoyancy area 43, 44 by a pair of front portion forming front buoyancy areas 23; each of said pair of front portions connecting its adjacent lateral portion to the central portion; the central portion and the pair of front and lateral portions forming a simulated W-shape (figure 3) when viewed in a plan view; each of the lateral portions projecting from their

Art Unit: 3617

front portion a distance sufficient to extend under an adjacent arm of a user. Although figure 2 clearly shows the lobes 43, 44 extending rearwardly to an area under the user's arm, the degree to which the lobe extends rearwardly is not very definite. Jarvis disclose a buoyancy device similar to that of Sabo. In the embodiment of figure 1 portions of the front part 20 is shown extending rearwardly, to some extent. But, in figure 5, Jarvis teaches that the lobe can extend to an area behind the user. In view of these disclosures, it would have been obvious to one skilled in the art to extend the lobes 43, 44 in Sabo such that they extend to the rear of the user, generally as taught by Jarvis, Jr. The degree to which the lobes are extended is deemed to have been an obvious matter of design choice dependant on the buoyancy characteristics desired. The recitation that the construction "causes the user to float in an upright position at an angle of between 45 and 90 degrees is considered a statement of desire functional result which carries no patentable weight.

The buoyancy device of Sabo includes a plurality of connecting means, including connecting means 45 for releasably connecting adjacent portions of the pair of front buoyancy areas, as in claims 6, 7, 8, and 9.

6. Claims 3-5 and 7-17 rejected under 35 U.S.C. 103(a) as being unpatentable over Sabo (2,950,488) in view of Jarvis, Jr. (4,263,686), as applied to claim 1 above, and further in view of Evert (4,498,882).

Evert discloses a buoyancy device similar to that of Sabo and Jarvis, Jr. and teaches the use of means for releasably connecting adjacent portions of the pair of front buoyancy areas together, as in claims 6-9); an encircling belt means (46) and means (48) for releasably connecting the front buoyancy areas to the belt means, as in claim 3 and means (49a) for releasably connecting the

Art Unit: 3617

central portion to the belt means, as in claims 4 and 5. In view of these disclosures, it would have been obvious to one skilled in the art to provide the buoyancy means of Sabo with belt means and releasable securing means for connecting the front buoyancy members to the belt means generally as taught by Evert. As shown by Sabo, varied connecting means can be provided in different locations. To provide means for releasably connecting the central portion to the lateral buoyancy area to hold the rear buoyancy area to the lateral buoyancy areas would have been an obvious matter of design choice to one skilled in the art.

Response to Arguments

7. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Prescott (1,511,006) discloses a buoyant device with buoyant elements extending under the user's arms. Galacke (4,167,051) discloses a buoyant device having front buoyant members extending under the user's arms. Daggs (6,905,383) discloses a buoyant device having a front portion that extends under the arms towards the back of the user.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jesús D. Sotelo whose telephone number is 571-272-6686. The examiner can normally be reached on Mon. – Fri. 5:30 AM – 2:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Samuel J. Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jesus D. Sotelo 1/5/06

Primary Examiner
Art unit 3617
KNX 03D69 ☺

jds
January 5, 2006